

COTTONWOOD HEIGHTS

RESOLUTION NO. 2013-38

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH IHC HEALTH SERVICES, INC. CONCERNING POLICE OFFICER SECONDARY EMPLOYMENT

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 27 August 2013 to consider, among other things, approving and ratifying a "Memorandum of Understanding Regarding Off-Duty Police Officers" (the "*MOU*") with IHC Health Services, Inc. ("*IHC*") concerning IHC's employment of off-duty officers of the City's police department; and

WHEREAS, the Council has reviewed the form of the MOU, a photocopy of which is annexed hereto; and

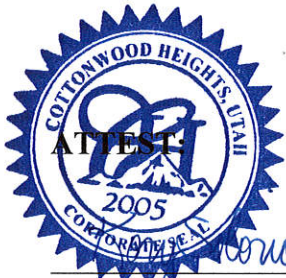
WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the MOU as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached MOU is hereby approved, that authorized officers of the City may execute and deliver the MOU on behalf of the City, and that any prior execution and delivery of the MOU by such officers is hereby ratified.

This Resolution, assigned no. 2013-38, shall take effect immediately upon passage.

PASSED AND APPROVED effective 27 August 2013.

COTTONWOOD HEIGHTS CITY COUNCIL



Kory Solorio, Recorder

By 
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 27th day of August 2013.

RECORDED this 29 day of August 2013.

603757.1

MEMORANDUM OF UNDERSTANDING REGARDING OFF-DUTY POLICE OFFICERS

This Memorandum of Understanding (“MOU”) is between the City of Cottonwood Heights, a Utah municipality, on behalf of its Police Department (the “City”) and IHC Health Services, Inc. (“Intermountain”). Intermountain intends to employ some of the City’s Law Enforcement Officers during their off-duty hours. When a Law Enforcement Officer is employed as a private security guard for Intermountain they are referred to herein as “Off-Duty Officers” or “Officers.” When a Law Enforcement Officer is employed by the City in their role as an active peace officer, they are referred to herein as “Law Enforcement Officers.” Intermountain and the City have the following understanding in connection with Intermountain’s use of the City’s Officers as Off-Duty Officers:

1. Compliance with Utah law

1.1 The City complies with all provisions of Utah Code Ann. §§ 53-13-114 and 58-63-304. Specifically, the City:

(a) maintains a written policy regarding peace officers working while off-duty, and posts this policy at a publicly available website for the City or on the Utah Public Notice Website created pursuant to Utah Code Ann. § 63F-1-701 if the City does not otherwise have access to a website, and,

(b) provides written authorization for each off-duty peace officer who works for Intermountain to work as an Officer.

(c) certifies that its policy regarding Officers addresses the issue of financial responsibility pursuant to Utah Code Ann. § 58-63-304(2)(a).

1.2 Intermountain complies with all of the provisions of Utah Code Ann. §§ 53-13-114 and 58-63-304. Specifically, Intermountain complies with all state and federal income reporting and withholding requirements regarding Officer wages.

1.3 For purposes of this MOU, an “Emergency” is defined as an imminent, credible threat to the life or safety of one or more persons. An Emergency exists if a Law Enforcement Officer’s training leads him to believe that extreme protective measures are warranted. Examples would include an imminent natural or manmade disaster, or an instance of someone brandishing a weapon or otherwise engaging in threatening behavior such that a person could reasonably anticipate bodily harm or worse to a particular person or group of persons.

2. Training and qualifications Notification to Intermountain

2.1 Intermountain desires to hire Officers who are certified at all times with Utah Peace Officer Training and Standards (“POST”). If any Officer working with Intermountain is terminated from the City for cause or fails to maintain full compliance at all times with POST

standards and certifications, the City shall immediately report such termination or certification failure to Intermountain.

3. Nature of employment by Intermountain

3.1 While working as an Officer for Intermountain, the Officer is acting as an Intermountain security officer employee and Intermountain maintains liability for any actions taken by the Officer. However, if an Emergency arises, if a crime is committed in the presence of the Officer, or if the Officer has probable cause to believe that a felony (including a non-violent felony) has been committed, the Officer may become a Law Enforcement Officer and may respond to the Emergency or felony according to his training, experience and authority as a Law Enforcement Officer, and is subject to all standards, reporting and other obligations and duties that accompany a Utah Law Enforcement Officer and the City maintains liability for any actions taken by the Law Enforcement Officer.

3.2 The City is not intending to staff Intermountain's Off-Duty Officer needs. The City may coordinate with its Law Enforcement Officers to enable them to work as Officers at Intermountain, but there is no obligation to do so.

3.3 Intermountain understands and agrees that if an urgent need arises for an Officer to assist the City, as determined by the City's Director of Public Safety (the "Director") or the designee of that the City's Director, an Officer may be required to leave Intermountain to respond as required. If an Officer is required to leave Intermountain by the City's Director or designee, the period of absence may be short or lengthy depending upon the nature of the City's urgent need.

4. Workers' Compensation

4.1 An Officer working for Intermountain who incurs a workplace injury is eligible for Workers' Compensation benefits through Intermountain.

4.2 If an Officer is acting as a Law Enforcement Officer, the Law Enforcement Officer is ineligible for Workers' Compensation through Intermountain for any injury sustained during the time the Law Enforcement Officer is acting as a Law Enforcement Officer, and the Law Enforcement Officer's coverage is the responsibility of the City.

5. Indemnification

5.1 Intermountain and City shall each secure and maintain their own comprehensive general liability insurance and workers compensation insurance. The above described insurance may be provided through properly reserved self-insurance in such form and amounts as shall be reasonably necessary for the performance of the obligations hereunder. Upon request, each party shall provide to the other certificates of proof of the insurance coverage required herein.

5.2 City shall, to the extent allowable by law, indemnify, defend and hold Intermountain harmless, including Intermountain's officers, directors, employees, contractors

and/or agents (collectively the “Related Parties”), from and against any and all claims, liabilities, and costs related to the claims, reasonable attorney fees, judgments, and settlements (collectively the “Claims”) related to the conduct and actions of Officers acting in their capacity as Law Enforcement Officers during an Emergency or under other circumstances described in this MOU. Correspondingly, Intermountain shall, to the extent allowable by law, indemnify, defend and hold the City and its Related Parties harmless from and against any and all Claims related to the conduct and actions of Officers acting in their capacity as Officers and employees of Intermountain. Additionally, both parties shall, to the extent allowable by law, indemnify, defend and hold each other and their Related Parties harmless from and against any and all Claims caused by each party’s own breach of this MOU as well as each party’s own negligent acts or omissions incurred in connection with this MOU.

5.3 City is a governmental entity and states that it is subject to the Utah Governmental Immunity Act, Utah Code Ann. § 63G-7-101 et seq., as amended (the “Act”). Nothing in this MOU shall be construed as a waiver of any rights or defenses applicable to City under the Act, including, without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments, as may be amended from time to time. Notwithstanding City’s assertion that the Act applies to it, nothing in this MOU shall be construed as a waiver by Intermountain of any of its rights under the law to indemnification: common law, statutory or otherwise, or its right to challenge the applicability of the Act to City or assert any other legal rights. If it is determined that City’s liability is limited under the Act, Intermountain’s responsibility to pay any indemnification to City shall be limited to the same amount.

6. Privacy Laws & Regulations

6.1 As a covered entity under federal and state law, Intermountain is required to comply with federal and state privacy laws. Intermountain’s privacy practices and policies may prohibit Officers from sharing certain kinds of confidential or medical information. These privacy practices and policies may also require that the Officer report to law enforcement agencies other kinds of information that the Officer becomes aware of. The City will not require or otherwise seek to obtain from the Officer any information that is not permitted by Intermountain’s privacy practices and policies.

7. GRAMA Requirements

7.1 It is understood that this MOU and other City records are subject to the Utah Government Records Access and Management Act, Utah Code Ann. § 63G-2-101, *et seq.* (“GRAMA”) and may be subject to public disclosure. Intermountain is not a public entity, is not subject to GRAMA, and the Officers’ activities while acting as Off-Duty Officers are not subject to GRAMA.

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IN WITNESS WHEREOF, the parties have executed this MOU on the dates herein shown below.

CITY

INTERMOUNTAIN

By: _____

By: _____

Its: _____

Its: _____

DATE: _____

DATE: _____